



J. TYLER McCAULEY
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
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LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

December 4, 2003

TO: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Yvonne Brathwaite Burke
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

FROM: J. Tyler McCauley 
Auditor-Controller

SUBJECT: **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
(HIPAA) AND OF THE LOS ANGELES SHERIFF'S DEPARTMENT**

This is to inform you that the Los Angeles Sheriff's Department (LASD) is now determined to be a new covered component of the County's Hybrid Entity designation, as defined by HIPAA. A letter from my Department further explaining the determination was sent to the Sheriff on December 3, 2003 and is attached for your review. Upon completion of a detailed HIPAA impact assessment by LASD, my Department will submit an updated version of the previously approved Hybrid Entity Board Letter to properly acknowledge LASD as a HIPAA covered health care provider.

If you have questions or require additional information, please contact me at (213) 974-8301.

JTM:GD

Attachment (1)

c: David E. Janssen, Chief Administrative Officer
Leroy D. Baca, Sheriff
Dr. Marvin Southard, Director, Department of Mental Health
Dr. Thomas Garthwaite, Director, Department of Health Services
Michael J. Henry, Department of Human Resources
Richard Shumsky, Chief Probation Officer
Jon Fullinwider, Chief Information Officer
Lloyd W. Pellman, County Counsel
Dave Lambertson, Interim Director, Internal Services Department
Mark J. Saladino, Treasurer and Tax Collector

"To Enrich Lives Through Effective and Caring Service"



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December 3, 2003

TO: Leroy D. Baca, Sheriff
Office of the Sheriff

FROM: J. Tyler McCauley 
Auditor-Controller

SUBJECT: HIPAA AND THE LOS ANGELES SHERIFF'S DEPARTMENT

This is to inform you that the State has recently taken the position that their AIDS Drug Assistance Program (ADAP) is a "covered health plan" under the federally mandated Health Insurance Portability and Accountability Act (HIPAA). In summary, this means that your Department, which had previously not been considered to have programs covered by HIPAA, now has to adhere to HIPAA's provisions, including complying with rules on Transactions & Code Sets (TCS), Privacy and Security. The biggest challenge at this point will be implementing the Privacy Rule as expeditiously as possible to avoid any potential federal fines or penalties.

The Chief Privacy Officer (HIPAA) works in my office and has met briefly with your staff. His name is Glen Day and he is available to further assist your Department in complying with the HIPAA provisions.

Following is a more detailed discussion of HIPAA and how it is being implemented in Los Angeles County. The specifics of the recent State ruling on its ADAP program are also presented:

Over the past 18 months, Los Angeles County has been actively assessing the various departments to determine whether or not they are directly impacted by the federally mandated HIPAA program. The County's HIPAA Task Force has had numerous meetings to assist in identification of departments that must be included in the County's "covered function component," as defined by HIPAA. The Los Angeles Sheriff's Department (LASD) has been an active participant in these meetings and, based on the information available at the time, it was determined that the Department did not have all of the attributes that would require it to be part of the covered function component. Specifically, although the Department was providing health care, it was not subject to HIPAA because it was not also conducting "covered electronic transactions." A more

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detailed report of the HIPAA Task Force's findings, presented in the Board Letter submitted by the Chief Information Office and approved by the Board on January 7, 2003, is attached.

However, we have now determined that due to an independent decision made by the State regarding its AIDS Drug Assistance Program (ADAP), LASD must now be included in the County's covered function component. Specifically, the State has determined that ADAP is a "covered health plan" under HIPAA. As a result, LASD's submission of electronic claims and certain other electronic correspondence with ADAP now fall within the HIPAA definitions for "covered electronic transactions," thereby making LASD's health care and claims submission activities subject to all of the HIPAA standards.

We first became aware of the State's decision about ADAP when the State Department of Health Services recently sent a HIPAA business associate agreement to LASD, indicating that ADAP was deemed by the State to be a covered health plan. Although HIPAA includes exceptions that would have allowed the State to conclude that ADAP is not a covered health plan, our subsequent communications with the State have confirmed that the State has chosen not to take advantage of those exceptions, and instead has formally designated ADAP as a HIPAA covered health plan. Certain electronic communications between a health plan and a health care provider constitute covered electronic transactions, thereby making LASD a covered health care provider and bringing the health care and claims submission activities of LASD under HIPAA.

As a covered health care provider, LASD must comply with all of the rules of HIPAA, including Transactions & Code Sets (TCS), Privacy and Security. The Privacy Rule became enforceable on April 14, 2003, so that compliance is currently required. TCS became effective as of October 16, 2003, although the "contingency plans" that have been adopted by most of the health care industry mean that any TCS enforcement action is highly unlikely until sometime next calendar year. The Security Rule does not become effective until April 21, 2005.

Since LASD interfaces with the ADAP system through a State-provided web portal, the financial impact of TCS should be negligible and much of the effort required to meet full compliance in this area will rest with California's DHS. However, LASD must urgently implement the Privacy Rule which is now in force, and must work, along with the rest of the County's covered function component, to comply with the Security Rule no later than April, 2005.

In conclusion, due to the State's determination that ADAP is a covered health plan, it is the assessment and determination by the Chief Privacy Officer (HIPAA), County Counsel, the Chief Information Office and outside HIPAA counsel that certain activities of LASD must now be considered to be part of the County's covered function component as a HIPAA covered health care provider, and must take the necessary actions to fully comply with HIPAA. The Chief Privacy Officer (HIPAA) and County

Counsel will support and assist LASD in their efforts to implement the Privacy Rule as expeditiously as possible to avoid any potential federal fines or penalties. If you have questions or require additional information, please contact Glen Day at (213) 974-2166.

JTM:GD

Attachment (1)

c: David E. Janssen, Chief Administrative Officer
William T. Stonich, Undersheriff, Sheriff's Department
Captian Rod Penner, Medical Services Bureau, Sheriff's Department
Sergeant Mark A. Glatt, Medical Services Bureau, Sheriff's Department
Debbie Lizzari, Assistant Administrative Officer, CAO
Richard Mason, County Counsel
Jon Fullinwider, Chief Information Officer
Jonathan Williams, Deputy Chief Information Officer
Robert Greenless, Chief Information Office
Dr. Marvin Southard, Director, Department of Mental Health
Dr. Thomas Garthwaite, Director, Department of Health Services



COUNTY OF LOS ANGELES

CHIEF INFORMATION OFFICE

500 WEST TEMPLE STREET
493 HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012

JON W. FULLINWIDER
CHIEF INFORMATION OFFICER

TELEPHONE: (213) 974-2008
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January 7, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**AUTHORIZATION OF FIRST PHASE OF COUNTYWIDE IMPLEMENTATION OF THE
PRIVACY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT (HIPAA)**

**DESIGNATION OF LOS ANGELES COUNTY AS A HYBRID ENTITY UNDER HIPAA
AND RELATED ACTIONS
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the first phase of countywide implementation of the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), as is more fully set forth herein.
2. Declare the County of Los Angeles a "Hybrid Entity" under HIPAA, with one "Health Care Component" comprised of the Department of Health Services, Department of Mental Health, and the Dorothy Kirby Center Program of the Department of Probation, said departments continuing to operate and function under the direction of their respective Department Heads, and are further directed to work cooperatively to develop unified privacy and security-related policies and procedures to comply with HIPAA.

3. Approve the recommendation to designate the Chief Information Privacy Officer (CIPO) as the:
 - a. Countywide privacy official responsible for privacy policies and procedures on behalf of the Covered Entity, the County of Los Angeles.
 - b. Countywide complaint official responsible for coordinating the resolution of privacy complaints on behalf of the Covered Entity.
4. Approve the additional recommendations for HIPAA Implementation regarding other County departments, as is set forth in Attachment A, and direct the Chief Information Officer to bring forward for the consideration of the Board of Supervisors a Memorandum of Understanding ("MOU") process related to the provision of protected health information to non-covered departments, said MOU to be acceptable to the Chief Administrative Office, the CIPO, and County Counsel.
5. Delegate to the departments comprising the Health Care Component the authority and responsibility to develop and promulgate privacy policies and procedures in accordance with HIPAA, provided that the advance approval for such policies has been obtained from the CIPO and County Counsel.
6. Approve the recommendation to designate the Chief Information Security Officer (CISO) as the countywide information security official responsible for security policies and procedures.

PURPOSE OF RECOMMENDED ACTION

The "Administrative Simplification" provisions of the federal Health Insurance Portability and Accountability Act, and regulations promulgated thereunder ("HIPAA") impose health information privacy requirements on entities that provide or pay for health care. HIPAA is Federal Law requiring County conformance to certain rules in the areas of Privacy, Security and Transactions and Code Sets (TCS). The County has opted to extend its TCS compliance deadline by one year to October 16, 2003, as permitted by the HIPAA Regulations. The Security rules are not yet finalized, but it is expected that they will be published by the end of December 2002. Because County services include providing health care and generating the HIPAA-covered electronic transactions, the County is subject to the HIPAA Privacy Rules, which have a mandatory compliance date of April 14, 2003. The rules allow covered entities, such as the County, to

determine and designate the services that will be subject to the rules. On August 14, 2002, these rules were modified by the federal Department of Health and Human Services ("DHHS") to allow even greater leeway in designating its "health care component" services under HIPAA.

The County as a whole, under the recently revised HIPAA Privacy Rules, may choose whether to bring all of its operations under HIPAA or, as a "hybrid entity," to instead designate only certain of its services as subject to HIPAA (i.e., only those services that either provide or pay for health care). If no such components are designated, all County functions will be subject to the HIPAA Privacy Rules. Such a result would cause the County to undertake much greater HIPAA implementation efforts at increased cost and, beginning April 2003, be at greater risk of liability for violations of the HIPAA rules, with no perceivable benefit. To avoid this result the Board of Supervisors must make a formal declaration that the County is a hybrid entity and must formally designate at least one health care component.

The designation of a single health care component would facilitate the exchange of protected health information (PHI) among the County services that are included in the health care component. Under a multiple health care component configuration, transfer of PHI held by a health care component to other health care components of the hybrid entity would be a disclosure under the HIPAA Privacy Rules, and allowed only to the same extent such a disclosure is permitted to a separate entity. For example, a multiple health care component configuration could impede the exchange of protected health information between DHS and DMH for business planning and development, such as conducting cost-management and planning-related analyses. Based on the foregoing, the recommendation is that your Board approve the County's designation as a "single health care component". While the designation of a single health care component will require the departments to coordinate HIPAA privacy activities on an administrative level, we emphasize that the designation of a single health care component would not structurally alter the operations of the departments.

HIPAA also mandates that the County formally designate officials to coordinate and manage privacy and security concerns. It is recommended that the CIPO and CISO positions, respectively, within the Department of the CIO, be designated by the Board to fulfill these provisions and responsibilities. The CIPO and CISO will work with and provide guidance to the various Departmental Privacy and Security Managers.

JUSTIFICATION

Under HIPAA Privacy Regulations, a covered entity may choose to designate itself as a "hybrid entity" after completing a detailed assessment of its business functions and operations. The County has had a HIPAA Task Force in effect for the past two years, with participation from all affected County departments, County Counsel, and outside counsel, the firm of Foley and Lardner. Based upon the comprehensive review by the Task Force and counsel, a series of recommendations has been developed for this first phase of countywide HIPAA implementation. These recommendations are set forth in full in Attachment A, and will, when adopted by your Board, establish the following for the County of Los Angeles:

1. Under the HIPAA Privacy Rules, the following County services must be included in the health care component because they (a) provide health care (as defined by HIPAA), and (b) engage in electronic HIPAA-covered transactions. It is therefore recommended that the Board of Supervisors designate these services, as included in the health care component of the County, as a hybrid entity:
 - Department of Health Services, including its workforce members wherever they are based in the County, such as those based at MacLaren Children's Center
 - Department of Mental Health, including its workforce members wherever they are based in the County, such as those based at MacLaren Children's Center
 - The Dorothy Kirby Center of the Department of Probation
2. The County has the option whether or not to include the following County services in the health care component. It is recommended that the Board of Supervisors formally note that the following County services are to be outside the health care component of the County hybrid entity:
 - The Sheriff's Department
 - Department of Children and Family Services (including the multidisciplinary assessment teams, the educational component, and similarly established groups for the coordination or management of care)
 - MacLaren Children's Center (excluding the DHS and DMH workforce members)

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- Probation Department (excluding the Dorothy Kirby Center)
- Department of Public Social Services
- Adult Protective Services under the Department of Community and Senior Services
- Employee Assistance Program under the Chief Administrative Office
- Occupational Health under the Chief Administrative Office

3. Because the following departments do not perform any covered functions (i.e., providing or paying for health care), the County does not have the option to include them in the health care component. If any of these departments provide services to the health care component and receive PHI from or on their behalf; or create PHI on their behalf in order to provide those services ("Business Associate Services"), the County must either:

- (a) Designate the department as a part of the health care component to the extent of the Business Associate Services, or
- (b) Ensure that the department enters into a legally binding Memorandum of Understanding (MOU) with the health care component with respect to those Business Associate Services, and the MOU must incorporate the privacy provisions required by HIPAA.

A subsequent Board letter will be submitted for your approval establishing interdepartmental MOUs for agencies that require access to PHI for other than treatment.

It is recommended that the Board of Supervisors require that (a) any of the following departments that provide Business Associate Services to the health care component shall enter into an MOU regarding those Services; and (b) any such MOU must incorporate the privacy provisions required by HIPAA:

- Department of the Treasurer and Tax Collector
- Internal Services Department
- Chief Administrative Office including the Service Integration Branch
- Department of the Auditor-Controller
- County Counsel

4. The remainder of the 39 County departments are excluded from HIPAA because the HIPAA Task Force has determined that they are not health care providers using electronic transactions nor do they require direct access to PHI from any of the covered departments.

FISCAL IMPACT/FINANCING

The proposed recommendations do not have a direct material cost for the County. However, HIPAA's cost implications to implement the required administration, training, security and information systems enhancement will be substantial for each affected department.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

1. HIPAA is a Federal Law requiring County conformance to certain rules in the areas of Privacy, Security and Transactions and Code Sets (TCS). Failure to comply would leave the County open to federal sanctions for non-compliance and potentially unable to provide health care related services or to submit health care related claims for reimbursement.
2. The recommendations set forth in this Board letter are based upon the facts, as they presently are understood by the respective departments, the Task Force, and outside counsel. To the extent the policies or practices of any department are modified from the present understanding, or to the extent law or regulations change, it will be necessary to bring forward revisions to these recommendations. These recommendations constitute what the Task Force believes to be the first phase of the ongoing effort to ensure County compliance with its HIPAA obligations.

The Honorable Board of Supervisors
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CONCLUSION

By being designated as a "hybrid entity," by assigning the Privacy and Security Officers and by authorizing the further actions set forth herein, further clarification of the County's position and status in regards to HIPAA will be provided. This will clarify which Departments have a responsibility to meet the privacy compliance provisions by April 14, 2003, and other matters related to HIPAA compliance.

Respectfully submitted,



JON W. FULLINWIDER
Chief Information Officer

JWF:GD:ygd

Attachment (1)

c: Adult Protective Services
Auditor-Controller
Chief Administrative Officer
Chief Probation Officer
County Counsel
Director, Department of Children and Family Services
Director, Department of the Coroner
Director, Department of Health Services
Director, Department of Mental Health
Director, Department of Military and Veteran Affairs
Director, Internal Services Department
Dorothy Kirby Center of the Department of Probation
Director, Department of Public Social Services
Employee Assistance Program
Executive Officer, Board of Supervisors
Information Systems Commission
MacLaren Children's Center
Occupational Health
Sheriff
Treasurer and Tax Collector

ATTACHMENT A

Recommendations to the Board of Supervisors

1. Because the County provides health care services that are "covered functions" under the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act, and specifically the privacy regulations promulgated under that Act ("HIPAA"), the County is a "covered entity" under HIPAA. The HIPAA Privacy Rules require each covered entity to designate a privacy official who is responsible for the development and implementation of privacy-related policies and procedures mandated by HIPAA. HIPAA also requires each covered entity to designate a contact person or office to be responsible for receiving complaints regarding privacy issues and for providing information about the covered entity's privacy practices. It is therefore recommended that the Board of Supervisors designate a Chief Information Privacy Officer to act as the privacy official for the County as a whole, and further that the Board of Supervisors designate its Chief Information Privacy Officer to receive complaints and provide information about the County's privacy practices.

2. Under HIPAA, the County may structure itself as a single "covered entity" or as a "hybrid covered entity." Because there seem to be no benefits on the one hand, and significant administrative burdens, costs and increased potential liability for noncompliance on the other, related to the "single covered entity" approach, it is recommended that the Board of Supervisors declare the County to be a "hybrid covered entity."

3. As a hybrid covered entity, the County may choose to identify a single health care component or identify multiple health care components. In either case, the County service(s) to be included within the component(s) must be designated. Because designation of a single health care component will allow greater efficiency in complying with the law, it is recommended that the Board of Supervisors designate only one health care component for the County.

4. Under the HIPAA Privacy Rules, the following County services must be included in the health care component because they (1) provide health care (as defined by HIPAA), and (2) engage in electronic HIPAA-covered transactions. It is therefore recommended that the Board of Supervisors designate these services as included in the health care component of the County as a hybrid covered entity:

- Department of Health Services, including its workforce members wherever they are based in the County, such as those based at MacLaren Children's Center
- Department of Mental Health, including its workforce members wherever they are based in the County, such as those based at MacLaren Children's Center
- The Dorothy Kirby Center of the Department of Probation

5. The County has the option whether or not to include the following County services in the health care component. It is recommended that the Board of Supervisors formally note that the following County services to be outside the health care component of the County hybrid entity:

- The Sheriff's Department
- Department of Children and Family Services (including the multidisciplinary assessment teams, the educational component, and similarly established groups for the coordination or management of care)
- MacLaren Children's Center (excluding the DHS and DMH workforce members)
- Probation Department (excluding the Dorothy Kirby Center)
- Department of Public Social Services
- Adult Protective Services
- Employee Assistance Program
- Occupational Health

6. Because the following Departments do not perform any covered functions (i.e., providing or paying for health care), the County does not have the option to include them in the health care component, with the exception that if any of these Departments provide services to the health care component and receive PHI from or on behalf of, or create PHI on behalf of, the health care component in order to provide those services ("Business Associate Services"), the County must either (1) designate the Department as a part of the health care component to the extent of the Business Associate Services, or (2) ensure that the Department enters into a legally binding MOU with the health care component with respect to those Business Associate Services, and the MOU must incorporate the privacy provisions required by HIPAA.

It is recommended that the Board of Supervisors require that (1) any of the following Departments that provide Business Associate Services to the health care component enter into an MOU regarding those Services; and (2) any such MOU must incorporate the privacy provisions required by HIPAA:¹

- Department of the Treasurer and Tax Collector
- Internal Services Department
- Chief Administrative Office including the Service Integration Branch
- Department of the Auditor-Controller
- County Counsel

¹ Based on the information provided to us, we concluded that the Department of the Coroner and the Department of Military and Veteran Affairs do not provide health care services, and are therefore ineligible for inclusion in the health care component (except to the limited extent of “business associate-like” services they provide to the health care component). It is recommended that the Board of Supervisors *not* require the Department of the Coroner and the Department of Military and Veteran Affairs to enter into an MOU with the health care component. To the extent that these Departments provide services to the health care component and receive PHI on behalf of, or create PHI on behalf of, the health care component, these Departments will rely on individuals’ authorizations for such uses or disclosures.